

DATA COLLECTION AND USE AGREEMENT

This DATA COLLECTION AND USE AGREEMENT (this "Agreement") is entered into as of _____, 2013, by and between Medical Research Analytics and Informatics Alliance, an Illinois not-for-profit corporation ("MRAIA") and _____ ("Provider") and jointly ("Parties").

WHEREAS, MRAIA has entered into a Data Confidentiality and Release Agreement (the "Contract") with the Illinois Department of Public Health ("IDPH") dated May 23, 2012 pursuant to which MRAIA will act as an agent of IDPH to assist IDPH in the collection of Electronic Laboratory Data, immunization data, and syndromic surveillance data using the public health and software certified for meaningful use and to otherwise support IDPH is exercising its responsibilities related to data collection for public health purposes;

WHEREAS, IDPH is a "public health authority" under the Health Insurance Portability and Accountability Act ("HIPAA") as amended and including the Privacy Rule, Security Rule, Enforcement Rule, and Breach Notification Rule as promulgated under HIPAA, (jointly the "HIPAA Rules");

WHEREAS, IDPH is authorized by law and under HIPAA and the HIPAA Rules to collect or receive health information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions;

WHEREAS, Provider is a "covered entity" under HIPAA and the HIPAA Rules;

WHEREAS, HIPAA and the HIPAA Rules expressly provide that a covered entity may disclose protected health information ("PHI") for public health activities and purposes without patient authorization. 45 C.F.R. § 164.512;

WHEREAS, HIPAA and the HIPAA Rules additionally provide that the covered entity's disclosure of PHI for public health activities and purposes may be to a "public health authority" that is authorized by law to collect or receive such information. 45 C.F.R. § 164.512;

WHEREAS, HIPAA and the HIPAA Rules define a “public health authority” as:

Public health authority means an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate.

45 CFR § 164.501 (emphasis added);

WHEREAS, HIPAA and the HIPAA Rules further provide that a covered entity is not required to make a minimum necessary determination for public health disclosures that are required by other law. 45 C.F.R. §§ 164.502(b) and 164.512(a);

WHEREAS, Illinois law mandates the reporting of communicable diseases, syndromic surveillance, and laboratory results (via the Illinois National Electronic Disease Surveillance System “I-NEDSS”);

WHEREAS, MRAIA is acting under the IDPH Contract and the IDPH Contract grants MRAIA authority to act as an agent of IDPH with respect to public health matters that are a part of IDPH’s official mandate; and

WHEREAS, Provider desires to disclose the Data (as defined herein) to MRAIA to be used by MRAIA in its performance under the IDPH Contract.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Purpose. The purpose of this Agreement is to govern Provider’s submission of patient data to MRAIA in accordance with HIPAA, the HIPAA Rules, and Illinois law. HIPAA and the HIPAA Rules recognize that a covered entity may disclose PHI to a public health authority without patient authorization. In addition, where required by law, a covered entity is not required to make a minimum necessary determination of the PHI that is to be disclosed pursuant to the legal requirement. Illinois law mandates the

reporting of certain communicable diseases, syndromic surveillance, and laboratory results under I-NEDSS. Provider desires to comply with such directives by entering into this Agreement by which MRAIA, as an agent of IDPH, will receive such information and submit it to IDPH in the form and manner IDPH requires.

2. Obligations of Provider.

2.1 Information to be Disclosed. Provider shall provide the health information required by law for syndromic surveillance, communicable disease reporting and laboratory reporting under I-NEDSS for MRAIA to carry out its public health obligations under the IDPH Contract and this Agreement (the "Data"). **For purposes of this Agreement, the Data will include:**

<http://www2.illinois.gov/gov/HIE/Documents/ELR%20Use%20Case%20HL7%202.5.1.pdf>

2.2 Accuracy. Provider shall use its best efforts to ensure that Data submitted to MRAIA by it or on its behalf are true, accurate and complete.

2.3 Notice of Inaccuracy. Provider shall provide notice to MRAIA of any potentially erroneous and/or missing information or data with respect to Data previously reported to MRAIA by or on behalf of Provider.

2.4 Corrections. Provider shall provide corrected or corroborating information or data in the event that Provider has reason to believe any information contained in Data previously submitted to MRAIA is not true, accurate, or complete.

2.5 Cooperation. Provider will cooperate with MRAIA in resolving any problems with Data. MRAIA may further require Provider to comply with reasonable quality assurance procedures to assure the validity and integrity of Data.

2.6 Restrictions. Provider shall not itself, or through any affiliate, employee, contractor, agent or other third party (i) sell, resell, distribute, host, lease, rent, license or sublicense, in whole or in part, the Services (as defined below) or access thereto; (ii) decipher, decompile, disassemble, reverse assemble, modify, translate, reverse engineer or otherwise attempt to derive source code, algorithms, tags, specifications, architecture, structure or other elements of the Services or technology employed by MRAIA, in whole or in part, for competitive purposes or otherwise; (iii) allow access to, provide, divulge or make available the Services or the content to any person other than those

who have authorization to access; (iv) write or develop any derivative works based upon the Services or technology employed by MRAIA; or modify, adapt, translate or otherwise make any changes to the Services or technology employed by MRAIA or any part thereof; (vi) use the Services to provide services to third parties, or otherwise use the same; (vii) disclose or publish, without MRAIA's prior written consent, performance or capacity statistics or the results of any benchmark test performed on the Services; or (viii) remove from any content or other materials owned by MRAIA identification, patent, copyright, trademark or other notices.

3. Obligations of MRAIA.

3.1 MRAIA Utilization of Data. MRAIA may use and disclose the Data received from Provider in accordance with its public health obligations under Illinois law and the IDPH Contract for syndromic surveillance, communicable disease reporting and laboratory reporting under I-NEDSS (the "Services").

3.2 Nondisclosure of Data. Except as provided in this Agreement, MRAIA shall not use or further disclose the Data except as required by law.

3.3 Re-Identification. MRAIA may not alter the Data to attempt to identify or contact any individual who is the subject of the health information from which the Data was created.

3.4 MRAIA's Agents. MRAIA may disclose the Data to an agent or subcontractor of MRAIA. MRAIA will enter into a written agreement with each agent or subcontractor that requires each to comply with the terms and conditions set forth in this Agreement.

3.5 Reporting. MRAIA shall report to Provider within Ten (10) days of MRAIA becoming aware of any use or disclosure of the Data in violation of this Agreement.

4. Termination.

4.1 Term. This Agreement shall be effective as of the Effective Date and shall continue until the Agreement is terminated in accordance with the provisions of this Section.

4.2 Termination. Either Party may terminate this Agreement:

4.2.1 Due to a material breach of any term or provision of this Agreement by the other Party upon written notice of such breach to the breaching Party and the failure of the breaching Party to cure such breach within thirty (30) days of receiving such written notice. If such breach is of such character as to reasonably require more than thirty (30) days to cure, then this Agreement may be terminated only if the breaching Party fails to commence action within such thirty (30) days to cure the breach and proceed to use reasonable diligence to cure the breach until it has been fully remedied.

4.2.2 At any time without cause upon one hundred eighty (180) days' prior written notice to the other Party.

4.3 Effects of Termination. Upon termination of this Agreement for any reason, no party shall have any further obligation hereunder except for (i) obligations accruing prior to the date of termination, and (ii) obligations, promises or covenants contained herein which are expressly made to extend beyond the Term.

4.4 Indemnification, Limitation and Hold Harmless. EXCEPT AS EXPRESSLY STATED IN THIS SECTION 4.4, ALL SERVICES ARE PROVIDED ON AN 'AS IS AS AVAILABLE' BASIS. MRAIA, ITS LICENSORS, AND AGENTS EXPRESSLY DISCLAIM TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL WARRANTIES, EXPRESSED OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, (i) ANY WARRANTY THAT ANY SOFTWARE, DATABASE, CONTENT, DELIVERABLES OR SERVICES ARE ERROR-FREE, ACCURATE OR RELIABLE OR WILL OPERATE WITHOUT INTERRUPTION OR THAT ALL ERRORS WILL BE CORRECTED OR WILL COMPLY WITH ANY LAW, RULE OR REGULATION, (ii) ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT AND (iii) ANY AND ALL IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. NO ADVICE, STATEMENT OR INFORMATION GIVEN BY MRAIA, ITS AFFILIATES, CONTRACTORS OR EMPLOYEES SHALL CREATE OR CHANGE ANY WARRANTY PROVIDED HEREIN. PROVIDER EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE CONTENT IS NOT DESIGNED OR INTENDED TO MEET ALL

OF ITS NEEDS OR REQUIREMENTS, INCLUDING REPORTING THAT IS REQUIRED UNDER APPLICABLE LAWS. PROVIDER ASSUMES ALL RESPONSIBILITY FOR THE SELECTION OF THE SERVICES PROVIDED HEREUNDER TO ACHIEVE ITS INTENDED RESULTS. PROVIDER SHALL BE SOLELY RESPONSIBLE FOR ENSURING THE ACCURACY OF ALL CONTENT AND PROPRIETARY CONTENT AND SHALL BE SOLELY LIABLE FOR ALL USE OF CONTENT AND PROPRIETARY CONTENT THAT IT HAS SUBMITTED TO MRAIA.

PROVIDER ACKNOWLEDGES THAT USE OF OR CONNECTION TO THE INTERNET PROVIDES THE OPPORTUNITY FOR UNAUTHORIZED THIRD PARTIES TO CIRCUMVENT SECURITY PRECAUTIONS AND ILLEGALLY GAIN ACCESS TO THE SERVICES AND ITS DATA. ACCORDINGLY, MRAIA CANNOT AND DOES NOT GUARANTEE THE PRIVACY, SECURITY OR AUTHENTICITY OF ANY INFORMATION SO TRANSMITTED OVER OR STORED IN ANY SYSTEM CONNECTED TO THE INTERNET.

PROVIDER ASSUMES SOLE RESPONSIBILITY AND LIABILITY FOR COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT. PROVIDER FURTHER ASSUMES SOLE RESPONSIBILITY AND LIABILITY FOR RESULTS OBTAINED FROM THE USE OF THE SERVICES AND FOR CONCLUSIONS DRAWN FROM SUCH USE. PROVIDER ACKNOWLEDGES AND AGREES THAT THE SERVICES ARE NOT INTENDED TO PROVIDE MEDICAL ADVICE, OPINIONS, DIAGNOSIS, OR A SUGGESTED COURSE OF TREATMENT. PROVIDER FURTHER AGREES THAT THE SOLE AND EXCLUSIVE RESPONSIBILITY FOR ANY MEDICAL DECISIONS OR ACTIONS WITH RESPECT TO A PATIENT'S MEDICAL CARE AND FOR DETERMINING THE ACCURACY, COMPLETENESS OR APPROPRIATENESS OF ANY DIAGNOSTIC, CLINICAL OR MEDICAL INFORMATION RESIDES SOLELY WITH PROVIDER. PROVIDER ACCEPTS ALL LIABILITY FOR SUCH DIAGNOSIS OR TREATMENT. MRAIA SHALL HAVE NO LIABILITY FOR ANY CLAIMS, LOSSES OR DAMAGES ARISING OUT OF OR IN CONNECTION WITH PROVIDER'S USE OF THE SERVICES AND ANY THIRD-PARTY PRODUCTS, SERVICES, SOFTWARE OR WEB SITES.

TO THE FULLEST EXTENT PERMITTED BY LAW, MRAIA'S TOTAL LIABILITY (INCLUDING ATTORNEYS' FEES AWARDED UNDER THIS AGREEMENT) TO PROVIDER FOR ANY CLAIM BY PROVIDER OR ANY THIRD PARTIES UNDER THIS AGREEMENT, WILL BE LIMITED TO THE FEES PAID BY PROVIDER FOR THE

PRIOR TWELVE (12) MONTHS. IN NO EVENT WILL MRAIA, ITS AGENTS OR EMPLOYEES BE LIABLE TO PROVIDER OR OTHER THIRD PARTIES FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY PUNITIVE, TREBLE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS, REVENUE, PROFITS, STAFF TIME, GOODWILL, USE, DATA, OR OTHER ECONOMIC ADVANTAGE), WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, WHETHER OR NOT PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THIS SECTION 4.4 SHALL SURVIVE FAILURE OF ANY EXCLUSIVE REMEDY.

5. Miscellaneous Terms.

5.1 Governing Law. This Agreement shall be enforced in accordance with the laws of the State of Illinois.

5.2 Waiver. No delay or omission by any party to exercise any right or remedy under this Agreement shall be construed to be either acquiescence or the waiver of the ability to exercise any right or remedy in the future.

5.3 Force Majeure. No party shall be liable or be deemed in default of this Agreement for any delay or failure to perform caused by Acts of God, war, terrorist acts, disasters, strikes or any similar cause beyond the control of the other Parties.

5.4 Severability. In the event any part or parts of this Agreement are held to be unenforceable, the remainder of this Agreement shall continue in effect.

5.5 Modification or Termination Upon Advice of Counsel. If at any time either party reasonably believes in good faith based upon the advice of reputable health care counsel that this Agreement or the performance by that party of any of its obligations under this Agreement violates any material law or regulation, state or federal, presents a substantial risk of the loss or restriction of that party's license, tax exemption or right to participate in Medicare, Medicaid or any other governmental program, or presents a substantial risk of causing debt issued by that party that was tax-exempt when originally issued to become subject to federal or state income tax, then that party may, upon written notice, require the other party to enter into good faith

negotiations to renegotiate the terms of this Agreement, in a manner that attempts to retain as much as possible of the economic arrangements originally contemplated by the Parties without violating any applicable legal, tax or reimbursement requirements. If the Parties are unable to reach an agreement concerning the modification of this Agreement within sixty (60) days after the date of the notice seeking renegotiation (or sooner if required by law), then either party may immediately terminate this Agreement by written notice to the other Parties. The rights of the Parties under this Section are in addition to any other termination rights the Parties may have under this Agreement.

5.6 Access to Books and Records. Until the expiration of four (4) years after the furnishing of services under this Agreement, MRAIA agrees to make available to the Secretary of Health and Human Services, the U.S. Comptroller General and their representatives this Agreement and all books, documents and records necessary to certify the nature and extent of the costs of the Services. If MRAIA carries out the duties of this Agreement through a subcontract worth Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period with a related organization, the subcontract shall also contain an access clause to permit access by the Secretary, Comptroller General and their representatives to the related organization's books and records.

5.7 Assignment. Neither Provider nor MRAIA may assign this Agreement without the written consent of the other party, which shall not be unreasonably withheld.

5.8 Amendments. This Agreement may not be modified in any respect other than by a written instrument signed by both Parties.

5.9 Entire Agreement. This Agreement supersedes any previous contracts between the Parties and constitutes the entire agreement between the Parties. All Parties acknowledge that any statements or documents not specifically referenced and made a part of this Agreement shall not have any effectiveness.

5.10 Counterparts. This Agreement may be executed in counterparts and each counterpart shall be deemed an original.

5.11 Incurring Financial Obligation. MRAIA shall have no authority whatsoever to incur any financial obligation on behalf of Provider and Provider shall have no authority whatsoever to incur any financial obligation on behalf of MRAIA.

5.12 Headings. The section and other headings contained in this Agreement are for reference purposes only and shall not affect in any way the making or interpretation of this Agreement.

5.13 Notices. All notices required or permitted hereunder will be given in writing by personal delivery or by certified mail, postage prepaid, by nationally recognized overnight courier service, or by electronic communication to the Parties at the following addresses or at such other places as a party may designate in writing:

If to MRAIA: MRAIA
 Attention: Dr. William Trick

and: Gerald "Jud" E. DeLoss
 Popovits & Robinson
 20635 Abbey Woods Court
 Suite 301
 Frankfort IL 60423

If to Provider: _____

5.14 Survival. If any term or condition of this Agreement contemplates action or inaction by the Parties, such term or condition shall survive termination of this Agreement and the Parties or Party will abide by such term or condition regardless of any termination of the Agreement.

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the day and year first set forth above.

MRAIA:

Provider:

Medical Research Analytics and
Informatics Alliance

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____